

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	C.A. No. 20-1744-CFC-EGT
v.)	
)	
WALMART INC. AND WAL-MART)	
STORES EAST, LP,)	
)	
Defendants.)	

MOTION FOR TELECONFERENCE TO RESOLVE DISCOVERY DISPUTE

Defendants Walmart Inc. and Wal-Mart Stores East, LP (collectively, “Walmart”) respectfully move this Court to schedule a hearing to address outstanding disputes regarding the following discovery matters:

1. Walmart’s request that the United States fully respond to Interrogatory No. 1 and Request for Production No. 6 by identifying now each prescription that forms the basis of each of the United States’ claims for civil penalties under 21 C.F.R. §1306.04, as opposed to (a) waiting until expert discovery to identify those prescriptions and (b) going beyond the claims pled to add more prescriptions during expert discovery.
2. Walmart’s request that the United States produce documents responsive to Request for Production No. 5 relating to any investigation, enforcement, or disciplinary action concerning the prescribers who wrote the prescriptions for which the United States is seeking civil penalties, regardless of the United States’ intent to present evidence about those prescribers to support its claims.
3. Walmart’s request that the United States produce documents from select federal agencies that are likely to have information responsive to Walmart’s Requests for Production, instead of the United States’ contention that these federal agencies are not subject to party discovery in this litigation.

The following attorneys, including at least one Delaware Counsel and at least one Lead Counsel per party, participated in a verbal meet-and-confer by telephone on the following dates: July 11 (60 minutes) and July 22 (30 minutes).

Plaintiff's Counsel:

Delaware Counsel: Dylan Steinberg

Lead Counsel: Katherine Ho, Kim Stephens, and Kate Brunson

Defendants; Counsel:

Delaware Counsel: Kelly Farnan

Lead Counsel: Jason Varnado, Billy Laxton, James Carlson, and Andrew Junker

The parties are available for a teleconference on the following dates: September 17, September 18 (after 1:00 pm), or September 19.

The parties had previously agreed to request 1,500 words for any letter briefing on these disputes. To the extent the Court prefers to use a page limit, the parties request permission to submit 4-page letters in 12-point font.

This dispute is the first¹ time that a discovery or protective order dispute has been brought before the Court.

OF COUNSEL:

Yaakov M. Roth
William G. Laxton, Jr.
Jeffrey R. Johnson
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113

Karen P. Hewitt
JONES DAY
4655 Executive Drive, Suite 1500
San Diego, CA 92121-3134

/s/ Kelly E. Farnan

Robert W. Whetzel (#2288)
Kelly E. Farnan (#4395)
Richards, Layton & Finger, P.A.
One Rodney Square
920 N. King Street
Wilmington, DE 19801
(302) 651-7700
whetzel@rlf.com
farnan@rlf.com

*Attorney for Defendants Walmart Inc. and
Wal-Mart Stores East, LP*

¹ Prior to the Scheduling Order being entered, the parties had a conference with the Court regarding the Government's access to materials produced in other litigation. D.I. 66, 67, 69.

Jason S. Varnado
Andrew J. Junker
JONES DAY
717 Texas, Suite 3300
Houston, TX 77001-2172

Laura Jane Durfee
JONES DAY
325 John H. McConnell Blvd.
Suite 600
Columbus, OH 43215-2673

James W. Carlson
JONES DAY
500 Grant Street, Suite 4500
Pittsburgh, PA 15219-2514

David W. Ogden
Charles C. Speth
WILLIAM CUTLER PICKERING
HALE AND DOOR LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Dated: August 27, 2024